



Department of Corrections
ADMINISTRATIVE BULLETIN

**Subject: AMERICANS WITH
DISABILITIES ACT
TITLE I INTERIM POLICY**

Number:

94/22

Date Issued:

December 27, 1994

Cancelled Effective:

This Administrative Bulletin (AB) supersedes AB 93/17 and clarifies the Department's interim policy and procedures regarding requests for reasonable accommodations. More specifically, it clarifies criteria regarding departmental implementation of that portion of Title I of the Americans with Disabilities Act (ADA) that pertains to discrimination against qualified, current employees with disabilities who may no longer be able to perform the essential duties of their job and who may require reasonable accommodation. It also covers our obligations under Section 504 of the 1973 Rehabilitation Act and the California State Fair Employment and Housing Act (FEHA).

INTRODUCTION

The ADA is one of the most complex pieces of federal labor legislation enacted in years. It is designed to provide a wide range of protection from discrimination to individuals with disabilities. As it does with all anti-discrimination laws, the California Department of Corrections (CDC) intends to fully comply with the provisions of this legislation.

The ADA was signed into law on July 26, 1990 and went into effect for CDC on July 26, 1992. The act consists of five titles. They are described as follows:

- Title I prohibits discrimination in employment against qualified individuals with disabilities because of their disability.
- Title II prohibits discrimination against qualified individuals with a disability by State and local governments and includes specific requirements regarding transportation provided by public transportation authorities.
- Title III prohibits private entities from discriminating on the basis of disability with respect to the full and equal enjoyment of any place of public accommodation operated by a private entity.
- Title IV pertains to telecommunications.
- Title V contains miscellaneous provisions including a provision barring retaliation against individuals who challenge discriminatory acts and a provision that states are not immune from actions in federal court for violations of ADA.



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A CDC task force has been assembled to assess the applicability of ADA titles on departmental operations and to provide recommendations on how to implement those provisions that will affect the Department and its operations. ADA is a federal law, and California law has been amended to conform with ADA.

It is currently not known to what extent this act will impact peace officer standards. The interim procedures outlined in this bulletin should not have any immediate impact on the existing peace officer standards and are to be used as a guide to determine the appropriate course of action to follow when responding to reasonable accommodation requests.

BASIC TENETS OF ADA

The ADA prohibits discrimination against a "qualified individual with a disability."

The legislation provides **three ways to qualify as an individual with a disability.**

First, an individual with a disability is a person who has an impairment that substantially limits one or more major life activities. **An impairment may be physical or mental.**

A physical impairment as defined by ADA includes, but is not limited to, the following:

- Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito urinary, hemic and lymphatic, skin, and endocrine.

A mental impairment as defined by ADA includes, but is not limited to, the following:

- mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

A person's impairment is determined without regard to any medication or assistive device that person may use.

Temporary non-chronic impairments that do not last for a long time and that have little or no long-term impact usually are not disabilities.



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To qualify for protection under ADA, an individual must have an impairment which "substantially limits" one or more major life activities. The extent, duration, and impact of the impairment are deciding factors when determining an individual's eligibility for protection under ADA.

An impairment is not a disability under ADA unless it substantially limits one or more major life activities. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population.

The regulations provide three factors to consider in determining whether a person's impairment substantially limits a major life activity:

- Its nature and severity.
- How long it will last or is expected to last.
- Its permanent or long-term impact or expected impact.

To be a disability covered by ADA, an impairment must substantially limit one or more major life activities. These are activities that an average person can perform with little or no difficulty. Examples are:

- Walking.
- Speaking.
- Breathing.
- Performing manual tasks.
- Working.
- Seeing.
- Hearing.
- Learning.



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- Caring for one self.

These are examples only. Other activities such as sitting, standing, lifting, or reading are also major life activities.

The **second** way a person may qualify as an individual with a disability is with a record of such an impairment. This protects people who have a history of a disability from discrimination, whether or not they currently are substantially limited in a major life activity. For example, this provision protects former cancer patients from discrimination based on their medical history. This provision also ensures that individuals are not discriminated against because they have been misclassified as disabled. For example, individuals misclassified as learning disabled are protected from discrimination on the basis of that erroneous classification.

The **third** way a person may qualify as an individual with a disability is where an individual is regarded as having an impairment that substantially limits a major life activity.

An employer is not required to hire or retain an individual who is not qualified to perform a job. The regulations define a qualified individual with a disability as a person with a disability (as defined above) who:

"Satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."

The ADA requires an employer to focus on whether a person can perform the "essential functions" of the job.

This is an important nondiscrimination requirement. The determination of which functions are essential is crucial in determining whether or not the individual with a disability is qualified.

The term "essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position.

The essential functions are those functions that the individual who holds the position must be able to perform, either unaided or with a reasonable accommodation.



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The inquiry into whether a particular function is essential may focus on whether or not the employer actually requires employees in a particular position to perform all the functions that the employer asserts are essential for that classification.

An employer must reasonably accommodate a qualified individual with a disability if that individual can perform the essential functions of the job with or without the reasonable accommodation.

A reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to perform the essential functions of the job.

Failure to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified person with a disability is considered to be discriminatory.

The following examples are intended to serve as guidelines and should not be construed as an exhaustive or restrictive list of options. Again, the intent of the law is that the employer must individually evaluate each employee's ability to perform their essential job duties with or without an accommodation. Any combination of these options may be utilized to accommodate the employee throughout the term of the accommodation. Reasonable accommodation options include, but are not limited to, the following:

- Making facilities readily accessible to and useable by an individual with a disability.
- Altering when or how an essential job function is performed.
- Part-time or modified work schedules.
- Obtaining or modifying equipment or devices.
- Modifying examinations, training materials, or policies.
- Providing qualified readers and interpreters.
- Permitting use of accrued paid leave or unpaid leave for necessary treatment.
- Providing reserved parking for a person with a mobility impairment.



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- Allowing the employee to provide equipment or devices that an employer is not required to provide.
- A variety of work options are available. Some of these include:
- **Job Restructuring** involves restructuring or modifying the position to which the employee is currently assigned to accommodate medical restrictions without affecting the performance of the essential duties. Supervisors are encouraged to fully explore this option before considering the other alternatives.
- **Job Placement or Reassignment** to an alternate vacant budgeted position in the same classification where medical restrictions can be accommodated.
- **Alternative Job Assignment or Temporary Assignment** (pursuant to State Personnel Board [SPB] Rule 443). Reasonable accommodation may be made to an alternate budgeted classification deemed appropriate to accommodate medical restrictions. The position shall not involve duties of a class that has a promotional relationship to the appointment class. A promotional relationship may be considered when the maximum salary rate of one class is at least two steps higher than the maximum salary rate of another class (SPB Rule 431). The original rate of pay shall not be affected if the employee is temporarily assigned to a lower or higher classification as a reasonable accommodation.
- An employee may be placed on **Special Assignment** to a position at the discretion of the hiring authority.

The reasonable accommodation obligation applies only to accommodations that enable the employee to perform the essential functions of the job. It does not apply to accommodations that a disabled person may request for some other reason.

A reasonable accommodation need not be the best accommodation available, as long as it is effective for the purpose. The accommodation must give the person with a disability an opportunity to perform the essential functions of the job, or to enjoy equal benefits and privileges of the job.



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An employer is not required to provide an accommodation that is primarily for personal use. Reasonable accommodation applies to modifications that specifically assist an individual in performing the essential functions of a particular job.

The ADA's requirements for certain types of adjustments and modifications to meet the reasonable accommodation obligation do not prevent an employer from providing accommodations beyond those required by ADA.

Equal Employment Opportunity Commission (EEOC) regulations require, when necessary, an informal, interactive process to find an effective reasonable accommodation.

The process to be used for identifying a reasonable accommodation is as follows:

- Look at the particular job involved. Determine its purpose and its essential functions. (Review duty statement and what current incumbents do.)
- Consult with the individual with a disability to find out their specific physical or mental abilities and limitations as they relate to the essential job functions. Identify the barriers to job performance and assess how these barriers could be overcome with an accommodation. (Do not ask about the individual's disabilities, but about their abilities to perform the essential functions of the job.)

In consultation with the individual, identify potential accommodations and assess how effective each would be in enabling the individual to perform essential job functions. Additional technical assistance, such as job analysis, may be necessary to accomplish this task.

If there are several effective accommodations that would enable the employee to perform the essential functions of the job, consider the preference of the individual with a disability. The accommodation determination works best when the employee and their physician have an active role.

Select the accommodation that best serves the needs of the individual and the employer.

The employer may require medical examination and documentation.

Medical substantiation may be required if the employee requests an accommodation on the basis of disability. An accommodation may be needed in an employee's existing job, or if the employee is being transferred to a different job. Medical information may be needed to



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determine if the employee has a disability covered by ADA and is entitled to an accommodation and, if so, to help identify an effective accommodation.

Medical inquiries related to an employee's disability and functional limitations may include consultations with knowledgeable professional sources, such as occupational and physical therapists, rehabilitation specialists, and organizations with expertise in specific disabilities.

The medical documentation shall contain specific information on the employee's performance limitations and/or capabilities.

ADA permits employers to make inquiries or require fitness-for-duty examinations:

- When an employee is having difficulty performing their job effectively. In such cases, a medical examination may be necessary to determine if they can perform essential job functions with or without an accommodation.
- When an employee becomes disabled. Under ADA, medical information or a medical examination may be required when an employee suffers an injury on the job.

Such an examination may also be required when an employee wishes to return to work after an injury or illness if it is job-related and consistent with business necessities.

Employers may conduct periodic examinations and other medical screening and monitoring required by federal, State, or local laws.

Employers may also conduct voluntary medical examinations and inquiries as part of an employee health program (such as medical screening for high blood pressure, weight control, and cancer detection).

All information obtained from medical examinations must be treated as a confidential medical record. Medical-related information may not be placed in an employee's personnel file.

All medical-related information must be kept confidential, with the following exceptions:

- Supervisors and managers may be informed about necessary restrictions on the work or duties of an employee and necessary accommodations.



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- First-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or if any specific procedures are needed in the case of fire or other evacuations.
- Government officials may investigate compliance with ADA and other federal and State laws prohibiting discrimination on the basis of disability or handicaps. Confidential information should only be released after consultation with CDC's Legal Affairs Division.
- Relevant information may be provided to the State Compensation Insurance Fund relative to a workers' compensation claim.

CDC REASONABLE ACCOMMODATION PROCEDURES

Employee Responsibility for Requesting Reasonable Accommodation

The employee shall submit a written Request For Reasonable Accommodation utilizing CDC Form 855, Request for Reasonable Accommodation (Attachment A), to the direct supervisor with a copy to the local Return to Work (RTW) Coordinator. The request shall be accompanied by the supporting medical documentation from the treating physician reflecting the specific work limitations or restrictions. This documentation shall clearly indicate the employee's work restrictions as outlined in the ADA criteria. The employee shall cooperate with Department personnel in obtaining the appropriate medical information necessary to process the reasonable accommodation request. The employee shall cooperate with Department personnel in identifying an appropriate reasonable accommodation.

If medical circumstances change and the employee requires a modification to a previously approved accommodation, the employee shall obtain from the treating physician medical verification describing the new work restriction and submit the documentation to the supervisor and the RTW Coordinator.

Procedures for Supervisors, Equal Employment Opportunity (EEO) Coordinators, Institution Personnel Officers (IPO), and RTW Coordinators Receiving Requests for Reasonable Accommodation

All requests for reasonable accommodation shall be processed promptly and an employee shall receive a departmental response within 20 working days from the date of the request. If a



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reasonable accommodation cannot be accomplished in 20 days the employee shall receive a response outlining the status of their request. **The employee shall not be forced to utilize accrued leave credits during this processing period.** If necessary, the employee shall be placed in an appropriate alternative position pending approval of the reasonable accommodation request. If the request is denied or no response is received by the end of the 20 days, the employee has a right to appeal directly to SPB, Appeals Division.

An employee does not have to specifically request a "reasonable accommodation," but must only let the employer know that some adjustment or change is needed to do a job because of the limitations caused by a disability.

When the employee notifies the supervisor that an adjustment or change is needed to do a job, the supervisor should inform the employee of the Department's reasonable accommodation policy and provide the employee with a copy of CDC Form 855.

A supervisor who is aware that an employee is having difficulty in performing a job assignment may discuss the Department's policy and procedures regarding disability and reasonable accommodation with the employee. Ultimately, the decision to request or accept a reasonable accommodation rests with the employee.

When reasonable accommodation is requested by an employee, the **supervisor** shall do the following:

- Inform the employee of the departmental policy and procedures relating to reasonable accommodation.
- Advise the employee that a written request for reasonable accommodation is required, utilizing CDC Form 855, as well as medical documentation from the treating physician indicating in sufficient detail any work restrictions or limitations. The supervisor should ensure that the treating physician has the employee's duty statement/job description identifying the essential functions prior to their evaluation. The RTW Coordinator and/or IPO can assist the supervisor in providing the treating physician with the necessary information.
- Upon receipt of a request for reasonable accommodation, a copy should be immediately forwarded to the facility EEO Coordinator and RTW Coordinator.



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- In some cases, the medical documentation from the treating physician may be vague or lack sufficient specificity. For example, doctors frequently impose sweeping limits like "no inmate contact." In that case, the supervisor shall consult with the RTW Coordinator to determine the appropriate course of action needed to secure the proper medical information. If necessary the RTW Coordinator shall contact the treating physician to clarify work restrictions and to explain the requirements of the employee's current classification.
- Upon receipt of all necessary documentation, the supervisor shall work with the RTW Coordinator to make every effort to assist the employee with the request for reasonable accommodation and process the paperwork in a timely fashion. The employee shall be kept informed as to the progress of the reasonable accommodation request.

When reasonable accommodation is requested by an employee, the **RTW Coordinator** shall do the following:

- Assume responsibility for monitoring the expeditious determination of the request. Interview the employee as part of the informal interactive process required by the statutes to find an effective reasonable accommodation. This interview may include the IPO and shall outline the employee's options for continued employment. All options shall be discussed with the employee and shall include the following: alternate placement via the medical demotion process, retirement (service disability, industrial disability), resignation, leave of absence, and nonindustrial disability leave. All options discussed shall also be provided in written form.
- If necessary, assist the employee in obtaining the required duty statement, post order, job analysis, CDC Form 855, etc.
- Direct and monitor the gathering and evaluation of medical information necessary to appropriately process the request. This may include contact with the employee's physician. Medical inquiries shall be limited to information specifically needed to address the reasonable accommodation request.
- Advise injured workers of the reasonable accommodation process if the RTW Coordinator has knowledge of work restrictions.



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- Prepare completed package and present to Warden, Regional Parole Administrator, or appropriate authority with recommendation for determination. Reasonable accommodation requests for job modification of peace officer employees or alternate placement must be submitted to headquarters for final determination. Such requests should be immediately forwarded to the headquarters Office of Environmental, Health, and Safety Management (OEHSM) for appropriate processing.
- Provide a response to the employee within 20 days of the formal request. Inform the employee of the first level recommendation and status of request. If a finalized response cannot be made within 20 days of the formal request, the hiring authority shall acknowledge receipt of the reasonable accommodation request and state to the employee that the reasonable accommodation request will remain pending until receipt of needed information from the approving physician.
- When assistive devices or equipment enhancements are requested, consult when necessary with OEHSM and the facility EEO Coordinator to identify appropriate equipment, furniture, or facility modifications. Direct the implementation of approved accommodations by working with Business Services and Accounting to purchase necessary services, equipment, or furniture.
- Forward copies of all reasonable accommodation requests, including those for assistive devices, to headquarters OEHSM for departmental record-keeping.
- Responsible for facility tracking of reasonable accommodation requests.

The facility, parole region, or headquarters administration may review the terms of a reasonable accommodation at any time and make modifications to facilitate the approval of the accommodation request. Every attempt should be made to accommodate an employee within their current classification.

When reasonable accommodation is requested by an employee, the **IPO** shall do the following:

- Work with the RTW Coordinator as the technical specialist answering questions concerning SPB guidelines, job classification, minimum qualification requirements, and suitability of potential placement into alternate positions.



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- Maintain up-to-date lists of job vacancies, job specifications, and minimum qualifications.
- Assist in the identification of "essential duties" for each classification. Assist in the location of alternative job placement.
- Ensure all placements are legal appointments.

When reasonable accommodation is requested by an employee, the facility **EEO Coordinator** shall do the following:

- Assist the RTW Coordinator in identifying an appropriate reasonable accommodation method except in those cases necessitating job placement and/or job modification.
- Coordinate the informal complaint process.
- Investigate and respond to formal complaints.

Headquarters Office of Environmental, Health, and Safety Management

- Assume responsibility for development of CDC's reasonable accommodation program guidelines as they relate to alternate job placements and/or modification of job duties.
- Assist in the development of departmental training to meet the legal requirements of ADA and reasonable accommodation procedures.
- Train existing RTW Coordinators in additional responsibilities resulting from reasonable accommodation requests.
- Assume responsibility for further processing of reasonable accommodation requests received from the facility/regional levels. Promptly review all requests deferred to OEHSM for review and further consideration. Coordinate fact-finding efforts and develop complete package with recommendations to the Deputy Director, Administrative Services Division, for review to ensure that compliance with appropriate laws and regulations are met before forwarding the request and recommendation to the appropriate Deputy Director for final determination. Gather all information necessary



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from the facility/region on deferred requests involving alternate placement outside the facility/region.


- Assist the facility in the gathering and evaluation of medical information as needed to process the reasonable accommodation requests.
- Coordinate efforts with Selection and Standards Branch, Personnel Management, and Institutions Division to develop the essential duties of various job classifications.
- Consult the Legal Affairs Division on reasonable accommodation requests prior to final determination.
- Monitor and track all reasonable accommodation requests via the departmental automated tracking system.

Headquarters Equal Employment Opportunity Office

- When assistive devices or equipment enhancements are requested, provide assistance to RTW Coordinator when necessary to identify appropriate equipment, furniture, or facility modifications.
- Assist in the development of departmental training to meet the legal requirements of ADA and reasonable accommodation procedures for assistive devices.
- Receive and investigate complaints of discrimination on the basis of disability. Train EEO counselors on the handling of informal complaints. Train EEO investigators on procedures to investigate formal complaints.
- Process formal complaints and assist Legal Affairs Division in departmental defense of lawsuits.

CRITERIA FOR DENIAL OF A REQUEST FOR REASONABLE ACCOMMODATION

A request for reasonable accommodation may be denied by the appropriate Deputy Director based on the following criteria:

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- The reasonable accommodation would constitute an **undue hardship**. An undue hardship is an action that requires "significant difficulty or expense" in relation to the size of the employer, the resources available, and the nature of the operation.

Accordingly, whether a particular accommodation will impose an undue hardship must always be determined on a case-by-case basis. It must be based on verifiable, objective facts, not on speculation about expense or potential for danger.

The concept of undue hardship includes any action that:

- Is unduly costly.
- Is extensive.
- Is substantial.
- Is disruptive.
- Fundamentally alters the nature or operation of the business.
- The employee poses a direct threat to their own health or safety, or to the health or safety of others. This threat must be an immediate and imminent danger based on objective, factual evidence and cannot be based on merely a perceived physical disability.

Determining whether an individual poses a significant risk of substantial harm to others must be made on a case-by-case basis. The employer should identify the specific risk posed by the individual. The employer should then consider four factors:

- The duration of the risk.
- The nature and severity of the potential harm.
- The likelihood that the potential harm will occur.
- The imminence of the potential harm.



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The determination that an employee poses a direct threat must rely on objective, factual evidence (not on subjective perceptions, fears, patronizing attitudes, or stereotypes) about the nature or effect of a particular disability, or of disability generally. Such a determination may require medical substantiation of such risk.

- The accommodation requested is primarily for personal use or by an employee who is not a "qualified disabled person" protected by the provisions of ADA.

Individuals who currently use drugs illegally are not individuals with disabilities protected under ADA. This includes people who use prescription drugs illegally as well as those who use illegal drugs. However, some people who have been rehabilitated and no longer use drugs illegally, or who are in the process of completing a rehabilitation program may be protected by ADA. In the case of peace officers, illegal drug usage may be a sufficient basis for otherwise discriminatory conduct. The burden is on the employee to prove that drugs are no longer being used.

**APPEAL PROCEDURES FOR A REASONABLE ACCOMMODATION REQUEST
DENIED**

If CDC denies the employee's request for reasonable accommodation, the employee has the right to appeal the decision to SPB, Appeals Division, within 30 days of the receipt of the decision.

ADA AND EMPLOYEE EVALUATIONS, DISCIPLINE, AND DISCHARGE

An employer can hold employees with disabilities to the same standards of production/performance as other similarly situated employees without disabilities for performing essential job functions (with or without reasonable accommodation).

An employer also can hold employees with disabilities to the same standards of production/performance as other employees regarding marginal job functions, unless the disability affects the ability to perform these marginal functions. If the ability to perform marginal functions is affected by the disability, the employer must provide some type of reasonable accommodation such as job restructuring (unless it causes undue hardship).

A disabled employee who needs an accommodation in order to perform a job function should not be evaluated on their ability to perform the function without the accommodation, and should not be downgraded because such an accommodation is needed to perform the function. Likewise, a supervisor should not mark a disabled employee "improvement needed" under the probationary



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category of "Learning Ability" if the employee can, in fact, perform the essential functions of the job.

An employer should not give employees with disabilities "special treatment." They should not be evaluated on a lower standard or disciplined less severely than any other employee. This is not equal employment opportunity.

An employer may not discipline or terminate an employee with a disability if the employer has refused to provide a requested reasonable accommodation that did not constitute an undue hardship, and the reason for unsatisfactory performance was the lack of accommodation.

An employer cannot reduce pay to an employee with a disability because of the elimination of a marginal job function or because it has provided a reasonable accommodation, such as specialized or modified equipment. The employer can give the employee with a disability other marginal functions that they can perform.

ENFORCEMENT AND REMEDIES

The United States EEOC has responsibility for enforcing compliance with Title I of ADA. An individual with a disability who believes that they have been discriminated against in employment can file a complaint with EEOC. The procedures for processing charges of discrimination under ADA are the same as those under Title VII of the Civil Rights Act of 1964.

Remedies include up to \$300,000 in compensatory and punitive damages, back pay, front pay, restored benefits, attorneys' fees, reasonable accommodation, reinstatement, and job offers, may be required of an employer who is found to have discriminated against an applicant or employee with a disability.

In addition, employees may seek remedies under the California FEHA. The FEHA has been amended to incorporate ADA. The Department of Fair Employment and Housing is the control agency responsible for enforcement at the State level.

POSTING NOTICES

An employer must post notices concerning the provisions of ADA. The notices must be accessible, as needed, to persons with visual or other reading disabilities. A new equal employment opportunity poster, containing ADA provisions and other federal employment nondiscrimination provisions may be obtained by writing to EEOC at 1801 L Street, N.W.,



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Washington, DC 20507, or calling 1-800-669-EEOC or 1-800-800-3302 (Telecommunication Device for the Deaf [known as TDD]).

Please inform all persons concerned of the contents of this bulletin. This bulletin shall remain in effect until incorporated into Volume III of the Department Operations Manual, Sections 31110, 33010, and possibly creating a new section. If you have any questions, please contact Cora Monson, Assistant Deputy Director, Office of Environmental, Health and Safety Management, at (916) 322-1375 or CALNET 492-1375.

R. H. DENNINGER
Chief Deputy Director

Attachments